

In the Drawings:

The drawings were objected to under 37 CFR 1.83(a) as not showing each and every feature of the claimed invention. Appropriate correction has been made. A Replacement Sheet is included in the Appendix.

ARGUMENTS/REMARKS

Claims 1 through 40 are pending in the present application. Claim 2 has been amended for purposes of clarification.

Applicants sincerely appreciate the indication of allowable subject matter with respect to claim 35.

In the Office Action, the use of the trademark VELCRO was noted in the application as not being accompanied by generic terminology. Appropriate correction has been made.

In the Office Action, claim 2 was objected to under 35 U.S.C. § 112, second paragraph, as having insufficient antecedent basis for a claim limitation. Appropriate correction has been made.

In the Office Action, the drawings are objected to under 37 CFR 1.83(a) as not showing every feature of the invention specified in the claims. Claims 18 and 36 each recite that the insert is adhesively connected to the pouch. The adhesive connection as disclosed in the specification and recited in the claims are aspects of the claimed invention that are understood by those skilled in the art of fasteners. Accordingly, detailed illustration of the claimed features is not essential for a proper understanding of the claims, although it will be provided. The claims accurately and concisely recite the invention in an unambiguous manner that is clearly understood by those skilled in the relevant art. No new matter has been added.

In the Office Action, claims 1 through 6, 14 through 16, 18, 25 through 29, 34, 36, 39 and 40 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 2,861,276 to Alfandre. Applicants respectfully disagree.

The Alfandre patent is directed to a garment closure having an elastic material and a cushion layer securely connected between two folded over portions and a binding. The binding is of sufficient strength to securely weld the elastic material and the cushion layer into the closure.

Claim 1 is directed to a cushioned fastener system for an article of apparel having a first portion; and a second portion adapted to interconnect with the first portion; wherein one of the first portion and the second portion is a cushion structure having at least one insert.

The Office Action states that the insert is adhesively connected to the pouch as broadly claimed in that the insert 64 is sealed within the pouch (Page 4). Applicants respectfully disagree with this interpretation.

In contrast, the Alfandre patent discloses an element 64 that is cushion layer that is secured within the fastener element by binding 58. The element 64 is not an insert because it is securely disposed between the backing 62, the binding 58 and the layers of the fastening element. Withdrawal and reconsideration of the 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claims 2, 3, 4 depend from independent claim 1 and are also allowable for the reasons set forth above with respect to claim 1.

Dependent claim 5 depends from independent claim 1 and provides that the cushion structure is a pouch. The Alfandre patent only discloses a cushion layer 64 that is enclosed between a backing layer and the elastic element 62. The Alfandre element does not disclose any pouch. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 6 depends from dependent claim 5 and is also not anticipated for the reasons set forth above with respect to claims 1 and 6.

Dependent claim 14 depends from dependent claim 6 and provides that the first layer has a first free end and the second layer has a second free end.

As discussed above, the layers of the fastening element are all enclosed within a binding element 58. (column 3, lines 12 through 15). The fastening element does not have any free-ends.

Dependent claim 15 depends from dependent claim 14 and provides that the first free-end and the second free-end are mutually connectable. As discussed above, the layers of the fastening element are all enclosed within a binding element 58. (column 3, lines 12 through 15). The fastening element does not have any free-ends.

Dependent claim 16 depends from dependent claim 14 and is also not anticipated by the Alfandre patent for the reasons set forth above.

Dependent claim 18 depends from claim 5 and provides that the insert is adhesively connected to said pouch.

As discussed above, the Alfandre patent does not disclose any insert or any pouch. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Independent claim 25 is directed to a cushioned fastener system having a first portion; a second portion adapted to interconnect with the first portion; wherein one of the first portion and the second portion is a pouch, adapted to contact a body, containing an insert capable of reducing pressure against the body and enhancing conformability to the body.

The Alfandre patent does not have any pouch that contains any insert. In contrast, as discussed above, the Alfandre patent discloses a fastening element having several layers that are all enclosed by a binder 58 that securely contains the layers. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Claim 26 depends from independent claim 25 and provides that the pouch has a first layer having a first free-end and a second layer having a second free-end.

As discussed above, the layers of the fastening element are all enclosed within a binding element 58 and do not form any pouch. (column 3, lines 12 through 15). The fastening element does not have any free-ends.

Claim 27 depends from claim 26 and provides that the free-ends are mutually connectable.

As discussed above, the layers of the fastening element are all enclosed within a binding element 58 and are fixedly connected to on another.

Claim 28 depends from dependent claim 26, and provides that the free-ends are releasably connected.

As discussed above, the binding element 58 securely encloses all layers of the fastening element so that there are not free-ends. Reconsideration and withdrawal of the 102(b) rejection are respectfully requested.

Dependent claim 36 depends from claim 25 and provides that the insert is adhesively connected to the pouch.

The Alfandre patent does not disclose any insert that is connected to any pouch. In contrast, the Alfandre patent only discloses a series of layers that are connected at their edges by a binding element 58 that is molded by heat. These layers are not connected to any pouch.

Dependent claims 39 and 40 depend from independent claim 25 and are also allowable for the reasons set forth above with respect to claim 25.

In the Office Action, claims 19 through 22 and 30 through 33 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Alfandre patent in view of U.S. Patent No. 6,231,423 to Deal et al. (hereinafter "the Deal et al. patent").

The Alfandre patent is directed to a garment closure having an elastic material and a cushion layer securely connected between two folded over portions and a binding. The binding is of sufficient strength to securely weld the elastic material and the cushion layer into the closure.

The Deal et al. patent is a push-up brassiere having an envelope between the front panel and the rear panel of the brassiere cups that receives a flexible pouch.

Dependent claim 19 is directed to an insert having a film that encases a cushioning substance.

The Office Action states, with respect to claims 19 through 22 and 30 through 33 that "Alfandre discloses the invention substantially as claimed".(Page 4)

Applicant does not agree with this assertion. The Alfandre patent does not disclose the invention substantially as claimed for the reasons set forth above and the Deal et al. patent does not address the deficiencies. Further, there is no motivation to combine the references.

The Alfandre is directed to a garment closure. The garment closure has a series of layers including an elastic

layer portion and a cushioning layer that are securely welded together at their outer edges with a binder. Indeed, the Alfandre patent addresses the binder numerous times (Column 1, lines 23 through 26, column lines 12 through 16, column 3, lines 48 through 52, and Claim 1, lines 12 through 15). The purpose of the Deal et al. patent is to have a brassiere with pockets that accept large silicone gel inserts at different locations. One of ordinary skill in the art would not modify a fastening element having bound edges with one that has pockets to accept inserts absent improper hindsight reconstruction obtained from applicants' invention. Reconsideration and withdrawal are respectfully requested.

Dependent claims 20, 21 and 22 depend from claim 19 and are also not anticipated for the reasons set forth above.

Dependent claim 30 depends from independent claim 25 and provides for an insert having a film that encases a cushioning substance.

As discussed above with respect to claim 19, there is no motivation in the Alfandre patent for an insert. Accordingly, with the reconsideration and withdrawal of the 35 U.S.C. 103(a) rejection are respectfully requested.

Dependent claims 31, 32 and 33 depend from claim 30 and are also not anticipated for the reasons set forth above with respect to claims 19 and 30.

In the Office Action, claims 7 through 13 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Alfandre patent. Applicants respectfully disagree.

Dependent claim 7 depends from dependent claim 6 and provides that the first layer is more stretchable than the second layer.

The Office Action states that "Alfandre discloses the invention substantially as claimed." (page 5) Applicants do not agree with this statement. As discussed above with respect to independent claim 1, from which dependent claims 7 through 13 depend, the Alfandre patent does not disclose a cushion structure having at least one insert, as claimed.

Further, with regard to claims 7 through 13, the Office Action states that "it would d [sic] have been obvious to one having ordinary skill in the are art the time the invention was made to construction [sic] the brassiere components of the selected materials in order to achieve the desired effect in addition to gaining the benefits and performance characteristics of the selected materials as desired". (page 5). Again, the Applicants do not agree. First, the arguments do not address the insert element that the Alfandre patent lacks. Second, the Office Action does not indicate which, if any, claimed elements of claims 7 through 13 are taught by the Alfandre patent.

Dependent claim 8 depends from dependent claim 6 and provides that the first layer be selected from the group consisting of mono filament material, multi filament material, and any combinations thereof.

Dependent claim 9 depends from dependent claim 8 and provides that the first layer have polyester, microfiber, cotton, nylon, spandex, power mesh, and any combinations thereof.

Dependent claim 10 depends from dependent claim 6 and provides that the second layer be selected from the group consisting of mono-filament material, multi-filament material and any combinations thereof.

Dependent claim 11 depends from dependent claim 10, and provides that the second layer has polyester, microfiber, cotton nylon, spandex, power mesh and any combinations thereof.

Dependent claim 12 depends from dependent claim 6 and provides that the first layer be microfiber spandex.

Dependent claim 13 depends from dependent claim 6 and provides that the second layer be microfiber spandex.

The claimed subject matter of claims 8 through 13 imparts desired functionality to the first layer and second layers and are not obvious design choices. Recondisderation and withdrawal of the 35 U.S.C. 103(a) rejections are respectfully requested.

In the Office Action, claims 23 and 27 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Alfandre patent in view of U.S. Patent Serial No. 5,395,280 to Greenberg (hereinafter "the Greenberg patent").

The Greenberg patent is directed to a surgical brassiere having a front pocket and a side pocket for receiving a prosthesis.

Dependent claim 23 depends from claim 5 and provides that the at least one insert is connect to the pouch.

The Alfandre patent discloses a fastener element having a binder 58 to securely and fixedly enclose layers of the fastener element. The Greenburg patent is directed to a brassiere specifically designed with pockets to receive prosthetic devices. There is no motivation to modify a bound fastener element with a pocket that receives inserts absent improper hindsight obtained from Applicants' disclosure. Reconsideration and withdrawal of the 35 U.S.C. 103(a) rejection are respectfully requested.

Dependent claim 27 depends from dependent claim 26 and provides that the free-ends are mutually connectable.

As discussed above, the Alfandre patent has a fastening element that has layers that are completely bound by element 58. The Alfandre patent does not have free-ends that are mutually connectable. In contrast, the free-ends are fixedly connected. Again, there is no motivation for this combination absent improper hindsight obtained from Applicants' disclosure.

In the Office Action, claims 24 and 38 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Alfandre patent.

Claim 24 depends from independent claim 1 and provides that the cushion structure has two inserts.

Dependent claim 38 depends from claim 25 and this claim provides that the cushion structure has two inserts.

As discussed above, the Alfandre patent does not have any insert. In contrast, the Alfandre patent discloses an element 64 that is cushion layer that securely within the fastener element by binding 58. The element 64 is not an insert because it is securely disposed between the backing 62, the binding 58 and the layers of the fastening element. Withdrawal and reconsideration of the 35 U.S.C. 103(a) rejection are respectfully requested.

In the Office Action, claim 17 was rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Serial No. 5,157,789 to Klass (hereinafter "the Klass patent").

The Klass patent is directed to a protective hip garment having a protective bubble liner to mitigate falls and prevent bed sores.

Dependent claim 17 depends from dependent claim 14 and this claim provides that the first and the second free-ends are releasably connected.


As discussed, the Alfandre patent discloses a fastener element having a binder 58 to securely and fixedly enclose layers of the fastener element. The Klass patent shows a pouch with a releasable fastener. There is no motivation to modify a bound fastener element with a pouch having a

releasable fastener absent improper hindsight obtained from Applicants' disclosure. Reconsideration and withdrawal of the 35 U.S.C. 103(a) rejection are respectfully requested.

In view of the foregoing, Applicants respectfully submit that all claims presented in this application patentably distinguish over the cited prior art and the cited combinations of same. Accordingly, applicants respectfully request favorable consideration and that this application be passed to allowance.

Respectfully submitted,

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